



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20541

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November 14, 1973

Mr. John P. McLaughlin
Work Training Center
2233 Fair Avenue
Chico, California 95926

Dear Mr. McLaughlin:

Further reference is made to your October 1, 1973 letter requesting review and reconsideration of our decision of July 23, 1973, in which we sustained the July 29, 1971 settlement issued by our Transportation and Claims Division that disallowed the four separate claims you submitted for reimbursement of expenses incident to your employment by the Forest Service, Department of Agriculture, at the Job Corps Conservation Center, Alder Springs, California.

You contend that your claim for reimbursement of \$465.40 you expended in the nontemporary storage of your household goods for the period November 14, 1968, through July 14, 1970, should be allowed because the Job Corps Conservation Center, Alder Springs, California, was in fact located in an isolated area. In this connection, you allege that certain other unspecified employees were reimbursed storage expenses because of the Center's remote location and complain that you did not receive equal treatment.

Nontemporary storage of household goods for Federal employees assigned to installations in the continental United States is governed by 5 U.S.C. 5726(c) which provides:

"§5726. Storage expenses; household goods and personal effects

"(c) Under such regulations as the President may prescribe, when an employee, including a new appointee and a student trainee to the extent authorized by section 5723 of this title, is assigned to a permanent duty station at an isolated location in the continental United States to which he cannot take or at which he is unable to use his household goods and personal effects because of the absence of residence quarters at the location, nontemporary storage expenses or storage at Government expense in Government-owned facilities (including related transportation and other expenses), whichever is more economical,

[Disallowance of Claim for Storage of Household Goods]

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may be allowed the employee under regulations prescribed by the head of the agency concerned." (Emphasis supplied.)

It is noted that the above statute limits the applicability of nontemporary storage expenses to new appointees appointed to manpower shortage positions, pursuant to 5 U.S.C. 5723, which reads as follows:

"§5723. Travel and transportation expenses of new appointees and student trainees; manpower shortage positions

"(a) Under such regulations as the President may prescribe and subject to subsections (b) and (c) of this section, an agency may pay from its appropriations—

"(1) travel expenses of a new appointee, or a student trainee when assigned on completion of college work, to a position in the United States for which the Civil Service Commission determines there is a manpower shortage; and

"(2) transportation expenses of his immediate family and his household goods and personal effects to the extent authorized by section 5724 of this title;

from his place of residence at the time of selection or assignment to his duty station."

Inasmuch as you were initially appointed in a nonmanpower shortage Corpsman Work Supervisor, GS-301-07 position, effective September 19, 1966, you were not covered by the provisions of 5 U.S.C. 5726(c) which authorizes payment for the nontemporary storage of household goods of manpower shortage new appointees assigned to isolated duty stations within the continental United States. Hence, even if the Alder Springs Center was designated as an isolated duty station, and the record does not indicate that it was so designated, as a nonmanpower shortage new appointee you would not be entitled to nontemporary storage of household goods at Government expense. In any event the information available to us does not support your contention that other employees were entitled to have their household goods placed in nontemporary storage at Government expense while assigned to Alder Springs as you allege.

You next contend that you are entitled to reimbursement of your claim for \$12.50 incurred incident to the purchase of a residence in Elk Creek, California, in August 1968, subsequent to your erroneous separation from the Forest Service. You argue that Mr. Bernstein, administrative officer of the Alder Springs Center, allegedly testified during your separation hearing that he had instructed you to move to the Alder Springs Center and that his instructions to you may have been in error. Although the connection between your Alder Springs and Elk Creek moves is not entirely clear from your letter the statutory authority for reimbursing an employee for costs incident to buying and selling residences applies only when employees are transferred in the interest of the Government. See 5 U.S.C. 3724a(a)(4) which authorizes reimbursement of this type of expense and 5 U.S.C. 3724 which prescribes the circumstances—transfer in the interest of the Government—under which such expenses may be reimbursed.

You next contend that your claim for reimbursement of long distance telephone calls made in connection with your erroneous separation in the amount of \$419.98 should be allowed on the basis that such expenses were made necessary by erroneous acts of Government officials. Corrective action for an erroneous separation is limited to the measures prescribed in 5 CFR 550.804 which reads as follows:

"§550.804 Corrective action.

"(a) When an appropriate authority corrects an unjustified or unwarranted personnel action, the agency shall recompute for the period covered by the corrective action the pay, allowances, differentials, and leave account (limiting the accumulation to the maximum prescribed by law or regulation for the employee) of the employee as if the unjustified or unwarranted personnel action had not occurred and the employee shall be deemed for all purposes to have rendered service in the agency for the period covered by the corrective action. In making its computation under this paragraph, an agency shall not include as allowances any amount which represents reimbursement for expenses which would have been incurred by an employee in the performance of his job if the unjustified or unwarranted personnel action had not occurred but which were not incurred because of the unjustified or unwarranted personnel action but shall include other allowances which are a form of remuneration to the employee for services that otherwise would have been rendered in the job.

"(b) In recomputing the pay, allowances, differentials, and leave account of an employee under paragraph (a) of this section, the agency shall include the following:

"(1) Premium pay which the employee would have received had it not been for the unjustified or unwarranted personnel action;

"(2) Changes in pay rates by reason of wage surveys, administrative action, law, or other changes of general application;

"(3) Changes in allowance or differential rates;

"(4) Within-grade or step increases or other periodic increases which would otherwise have become due;

"(5) Changes in pay caused by changes in assigned working shifts;

"(6) Changes in the employee's leave earning rate;
and

"(7) Any other changes which would affect the amount of pay, allowances, differentials or leave which the employee would have earned had it not been for the unjustified or unwarranted personnel action."

That provision is in keeping with the statutory provision under which it was promulgated which also does not provide for payment of expenses incurred by an employee in seeking reinstatement. 5 U.S.C. 5596.

Inasmuch as the applicable law and regulation do not provide for the reimbursement of personal expenses such as the cost of long distance telephone calls incurred by an employee in securing his reinstatement, there is no legal authority under which this Office may allow such personal expenses. In the absence of such authority, we must sustain our original disallowance of your claim of \$419.98 for long distance telephone calls.

Finally, you contend that your claim in the amount of \$504.05 for travel of yourself and family, transportation of your household goods and

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miscellaneous expenses incurred in connection with your move from Alder Springs in May 1968 should be allowed on the basis that had you not been erroneously separated, you would have continued to be a Federal employee and eventually would have been entitled to similar benefits at some subsequent date. We are however unable to allow claims on the basis of speculation. On the contrary, we may allow a claim only when the facts in a particular case at a given time operate to entitle the employee to benefits granted by statute or regulation. As we previously indicated in our settlement and other correspondence, there is no authority to allow you reimbursement in connection with your move from Alder Springs, California, in 1968 under 5 U.S.C. 5724 and 5724a, because neither a transfer of station was involved nor were you reemployed in the Federal service within 1 year of your separation. Therefore, we must sustain the disallowance of your claim in the amount of \$504.05.

In summary, upon further review and reconsideration, we must adhere to our decision of July 23, 1973, that sustained the settlement of our Transportation and Claims Division dated July 29, 1971.

Concerning your request for information regarding a further appeal from our decision, you are advised that under the law the decisions of our Office are final and conclusive upon the executive branch of the Government. If you desire to pursue the matter in the courts, see sections 1346 and 1491 of title 28, United States Code, pertaining to matters cognizable in the District Courts of the United States and the United States Court of Claims.

Sincerely yours,

Paul G. Denbling

For the Comptroller General
of the United States